IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1999 OF 2003

Smt.Maneck Kailkushroo Banajee
represented by General Power of
Attorney Holder Dada Bhoy K.Banajee .. Petitioner.
Vs.
Kantilal Chandulal Parmar .. Respondent.

Mr.A.V.Anturkar for the petitioner.
Mr.R.P.Behere for the respondent.

CORAM : D.B.BHOSALE, J.

DATED : 28TH SEPTEMBER, 2004

P.C.:

. Heard Mr.Anturkar, learned counsel for the petitioner and Mr.Behere, learned counsel for the respondent.

2. This petition is directed against the concurrent findings recorded by the courts below in the application Exhibit-5 filed by the petitioner-plaintiff seeking injunction against the respondent from carrying out construction of the suit premises as described in the plaint. The impugned order is passed on 28.11.2002. While issuing notice on 31.3.2003, this court had granted ad-interim relief in terms of prayer clause (b) for

a period of six weeks from the date of the order. Ad-interim relief has not been extended further. The learned counsel appearing for the parties are not in a position to state whether the construction is complete. This court is not expected to reassess the material and seek to reach the conclusion different from the one reached by the courts below, if one reached by the courts below was reasonably possible on the material. If the discretion has been exercised by the trial court reasonably and in judicial manner the fact that this court can take different view may not justify interference with the discretion exercised by the courts below. No interference at the instance of the petitioner is called for in the orders impugned in the petition. The petitioner is 81 years old. Keeping that in view, in my opinion, the interest of justice would be served if the trial is expedited. The petition is dismissed. The trial court shall endeavour to dispose of the trial as expeditiously as possible and preferrably within a period of six months from today. Needless to say that the construction, if any, carried out after filing of the suit shall be subject to outcome of the suit.

(D.B.Bhosale, J.)